

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA

YOUNG AMERICANS FOR FREEDOM, *et al.*,

Plaintiffs,

v.

U.S. DEPARTMENT OF
EDUCATION, *et al.*,

Defendants.

Case No. 3:24-cv-00163-ARS

DECLARATION OF RESHONE MOORE

1. I, ReShone Moore, Ph.D., am employed by the United States Department of Education (“Department”) as a Division Director in the Graduate and Special Focus Program of the Office of Postsecondary Education (OPE). I have been in my current role since April 2019. I have worked at the Department since June 1997. Prior to becoming a Division Director, I was first a Senior Management and Program Analyst within Student Service and a Management and Program Analyst with the White House Initiative on Historically Black Colleges and Universities.

2. As a Division Director, my job responsibilities include: managing three federal programs, the Ronald E. McNair Postbaccalaureate Achievement Program, the Training Program for Federal TRIO Programs, and the Graduate Assistance in Areas of National Need Program. My current responsibilities within OPE include the management of and supervising staff working on certain grant programs authorized

under the Higher Education Act of 1965 (“HEA”), as amended, including the Ronald E. McNair Post-Baccalaureate Achievement Program (“McNair Program”). This includes grants management activities related to soliciting, reviewing and selecting applications for funding, providing technical assistance, and monitoring.

3. I am authorized to provide this Declaration on behalf of the Department of Education and am providing it in support of Defendants’ Opposition to the Motion for a Preliminary Injunction. This declaration is based on my personal knowledge and belief, my experience working at the Department of Education, as well as information conveyed to me by Department of Education personnel in the course of my official duties.

4. The McNair Program provides “disadvantaged college students with effective preparation for doctoral study.” 20 U.S.C. § 1070a-15(a). Under this program, the Department of Education provides institutions of higher education and combinations thereof (“institutions” or “grantees”) with the opportunity to apply for grants for a five-year period. The Department publishes a notice in the Federal Register seeking applications under a particular competition. 34 C.F.R. § 647.10. As part of their application for grant funding, applicants describe their plan for identifying, recruiting and selecting participants to be served by the project. 34 C.F.R. § 647.21(c).

5. Each grantee administers the McNair Program or project at their school. Projects must provide participating students with certain mandatory services and activities, including but not limited to opportunities for research or other scholarly activities and summer internships. *Id.* 647.4(a). Projects may also provide certain permissible services and activities, such as mentoring programs and services designed to

improve the financial and economic literacy of students. *Id.* 647.4(b).

6. The most recent competition for McNair funding occurred in 2022, and the average award amount was \$273,680.84 per grantee. In total, the Department awarded \$56,378,254.00 in FY 2022 funding to 206 grantees, with the goal of serving 5,677 student participants across the nation. The number of student participants at grantee institutions ranged from 25 to 46 students. The average cost per participant in FY 2022 (amount of grant resources allocated per student) was \$9,931.

7. The most recent national profile of the McNair Program (Fast Facts Report for the Ronald E. McNair Postbaccalaureate Achievement Program: 2019–20) presented information for the performance of the program as of the 2019–20 academic year. This report detailed that McNair grantees served 5,806 program participants during this time period.

8. Each grantee also develops and administers the process by which it accepts students to participate into its McNair Program. While the student participant application process varies by grantee, grantees must require potential McNair scholars to submit information regarding their status as a low-income or first-generation student, whether they are a member of a group underrepresented in graduate education, in order to determine whether the student is eligible to participate in the program. Grantees may also require potential McNair scholars to submit additional information, which they use to decide who to select from the eligible candidates for their specific project. Grantees' selection criteria vary, but may include, for example, documentation of their GPA, an essay of interest, and/or faculty recommendation letters. Grantees set their own timelines

for the selection of McNair Program participants within their particular project. The Department reviews grantees applications for funding to ensure that they are complying with the statutory and regulatory requirements applicable to the McNair Program at the time of award. This includes confirming that the grantee has provided an assurance within their application that at least two thirds of project participants will be low-income, first-generation students.

9. By statute, any project that receives funds through the McNair Program must provide the Department of Education with “an assurance that not less than two-thirds of the individuals participating in the project proposed to be carried out under any application be low-income individuals who are first-generation college students.” 20 U.S.C. § 1070a-15(d)(1). Each project must also provide “an assurance that the remaining persons participating in the project proposed to be carried out be from a group that is underrepresented in graduate education, including . . . Alaska Natives . . . Native Hawaiians . . . [and] Native American Pacific Islanders.” *Id.* § 1070a-15(d)(2).

10. By regulation, eligible students must (among other factors) be either: “(1) A low-income individual who is a first-generation college student; [or] (2) A member of a group that is underrepresented in graduate education[as defined in 34 C.F.R. § 647.7]; or (3) A member of a group that is not listed in § 647.7 if the group is underrepresented in certain academic disciplines as documented by standard statistical references or other national survey data submitted to and accepted by the Secretary on a case-by-case basis.” 34 C.F.R. § 647.3(c). “Low-income individual” is defined as “an individual whose family’s taxable income did not exceed 150 percent of the poverty level in the calendar year

preceding the year in which the individual participates in the project.” *Id.* § 647.7(b). The term “[g]roup[] underrepresented in graduate education,” as used in § 647.3(c)(2), is defined as “Black (non-Hispanic), Hispanic, American Indian, Alaskan Native . . . , Native Hawaiians . . . , and Native American Pacific Islanders” *Id.*

11. All participating students must also be a U.S. citizen, permanent resident, or have certain other affiliations with the United States, *id.* § 647.3(a), currently enrolled in a degree program at an institution of higher education that participates in the student financial assistance programs authorized under Title IV of the Higher Education Act of 1965, *id.* § 647.3(b), and not enrolled in doctoral level study at an institution of higher education, *id.* § 647.3(d).

12. Each project may set its own standards for admission into its McNair Program so long as it provides the Department of Education the assurances within 20 U.S.C. § 1070a-15(d) and as long as each participating student meets the minimum eligibility requirements set by regulation. For example, projects set varying minimum GPA requirements, application deadlines, and academic disciplines of focus.

13. The Department accepts requests from grantees on a case-by-case basis to serve students who are a member of a group that is not listed in § 647.7 if the group is underrepresented in certain academic disciplines, as documented by standard statistical references or other national survey data. *See* 34 C.F.R. § 647.3(c)(3). Requests are made by grantees to the Department. The Department will typically require grantees to provide the names of the proposed students to be served, type of underrepresentation, gender, race/ethnicity, and field of study of the proposed student(s), along with standard

statistical references or other national survey data to support the student(s)' categorization as a member of a group that is underrepresented within their identified academic discipline. Requests for a case-by-case determination of underrepresentation are reviewed by the Graduate and Special Focus Programs Division of OPE. Staff review data provided by the grantee, as well as data from the National Center for Science and Engineering Statistics (NCSES) pertaining to doctoral degrees awarded by field, sex, citizenship, race, and ethnicity from 2011 through 2020, to determine whether that group is proportionally represented or underrepresented in certain academic disciplines.

14. The Department of Education has approved applicants on a case-by-case basis under 34 C.F.R. § 647.3(c)(3) on the basis of data associated with their membership in an underrepresented group, including both membership in racial groups and in non-race-based groups that are underrepresented in a particular academic discipline. For example, the Department has accepted the following groups as underrepresented in a particular academic discipline: Females in Physics and Biomedical Engineering, Asian Males in Cybersecurity, Transgender Asian Females in Chemistry, and Muslim Females in Neuroscience. In calendar year 2024 thus far, OPE has approved 12 applications for case-by-case consideration of underrepresentation as of the date of this declaration.

15. Projects are not required to admit students to their McNair Program pursuant to 34 C.F.R. § 647.3(c)(2) and/or (c)(3), and may identify a target population more narrowly expressed in terms of geography, type of institution, academic discipline, type of disadvantage, type of underrepresentation, or any other qualifying descriptor. The only minimum requirement is that each project provides an assurance that not less

than two-thirds of participating students are low-income individuals who are first-generation college students, and that any remaining students then be from a group unrepresented in graduate education. *See* 20 U.S.C. § 1070a-15(d)(1)-(2). A project can therefore comply with the requirements of the McNair Program if it only considers or only accepts students who meet the low-income, first generation-generation criterion, *i.e.* students who qualify under 34 C.F.R. § 647.3(c)(1). For example, the Department has funded grants with Troy University and North Carolina A&M where each grant recipient served 100% low-income, first-generation students within a particular funding cycle.

I hereby declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Executed on September 23, 2024

By,

**RESHONE
MOORE**

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RESHONE MOORE
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ReShone Moore, Ph.D.
Division Director
Office of Postsecondary Education